

Remarks

This Reply is in response to the Office Action mailed December 16, 2008 and an interview with Examiner Perungavoor on April 17, 2009.

I. Applicant's Interview Summary

Applicant acknowledges the courtesy of an interview between Examiner Perungavoor and Applicant's representative Nathan Feld on April 17, 2009. During the course of the interview, Applicant noted that the Office Action mailed December 16, 2008 appears to reflect the claims provided with the Reply filed August 25, 2008 rather than the claims provided with the Request for Continued Examination filed September 23, 2008. Applicant also noted that the present Application claims the benefit of priority to Provisional Application 60/450,991 filed February 28, 2009, which appears to predate the effective 35 U.S.C. 102(e) date of the Junghuber reference. The Examiner indicated that the claims as currently presented and Applicant's remarks would be reviewed upon receipt of this reply.

II. Summary of Examiner's Rejections

Prior to the Office Action mailed December 16, 2008, Claims 1-13, 15-27, 29-39, 41-53, 55 and 57 were pending in the Application. In the Office Action, Claims 1-13, 15-27, 29-39, 41-53, 55 and 57 were rejected under 35 U.S.C. §102(e) as being anticipated by Junghuber et al. (U.S. Patent Publication No. 2004/0133660, here after Junghuber).

III. Claim Rejections under 35 U.S.C. §102(e)

In the Office Action mailed December 16, 2008, Claims 1-13, 15-27, 29-39, 41-53, 55 and 57 were rejected under 35 U.S.C. §102(e) as being anticipated by Junghuber (U.S. Patent Publication No. 2004/0133660).

The Junghuber reference was filed in the United States of America on October 9, 2003, and appears to claim the benefit of priority to German Patent Application DE02022899.5 filed October 15, 2002. However, as noted in MPEP section 2136.03(I), "35 U.S.C. 102(e) is explicitly limited to certain references 'filed in the United States before the invention thereof by the applicant' (emphasis added). Foreign applications' filing dates that are claimed (via 35 U.S.C. 119(a) - (d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes." (emphasis in original)

Applicant respectfully submits that the reference date of the Junghuber reference for the purposes of 35 U.S.C. 102(e) appears to be October 9, 2003, the date on which it was filed in the United States. Accordingly, since the present Application is entitled to a priority date of February 28, 2003, based on Provisional Application 60/450,991, Applicant respectfully requests that the rejection over the Junghuber reference be withdrawn, and that the claims as currently presented be reconsidered.

IV. Conclusion

In view of the above amendments and remarks set forth above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and reconsideration thereof is respectfully requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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